

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal Action No. 3:07CR122

TYTRAY L. MARTIN

MEMORANDUM OPINION

On December 15, 2010, the Court received from Martin a motion to dismiss the present 28 U.S.C. § 2255 motion. Because the United States has filed an answer to the § 2255 motion, Martin may not dismiss this action as a matter of right. Fed. R. Civ. P. 41(a)(1)(A)(i). Nevertheless, a motion for dismissal without prejudice should not be denied absent substantial prejudice to the opposing party. See Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986). The United States has not alleged and the record does not suggest that the United States will suffer substantial prejudice if the action is dismissed. Accordingly, the Court will GRANT Martin's motion (Docket No. 51) and the 28 U.S.C. § 2255 action will be DISMISSED WITHOUT PREJUDICE.

The Clerk of the Court is DIRECTED to send a copy of this Memorandum Opinion to Martin and to counsel for the United States.

An appropriate Order shall accompany this Memorandum Opinion.

Date: January 12, 2011
Richmond, Virginia

/s/ REP
Robert E. Payne
Senior United States District Judge